

CUSTOMER NO.: 38107
EXPEDITED PROCEDURE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of) Examiner: Kai RAJAN
Rolf NEUMANN)
Serial No.: 10/596,111) Art Unit: 2831
Filed: March 6, 2007) Confirmation: 2170
For: **MEDICAL MEASURING
DEVICE**)
Date of Last Office Action:)
December 4, 2008)
Attorney Docket No.:) Cleveland, OH 44114
PHDE030400US / PKRZ 2 01359) January 27, 2009

**CONDITIONAL PETITION FOR WITHDRAWAL
OF THE FINALITY OF THE OFFICE ACTION OF
DECEMBER 4, 2008 (MPEP § 706.07(a),(c),(d),(e))**

Mail Stop: AF
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

If the Examiner denies the applicant's request to withdraw the premature *Finality* of the December 4, 2008 Office Action in Amendment C filed herewith, the applicant hereby Petitions for withdrawal of the *Finality* of the December 4, 2008 Office Action.

CERTIFICATE OF ELECTRONIC TRANSMISSION

I certify that this **CONDITIONAL PETITION FOR WITHDRAWAL OF THE FINALITY OF THE OFFICE ACTION OF DECEMBER 4, 2008 (MPEP § 706.07(a),(c),(d),(e))** and accompanying documents in connection with U.S. Serial No. 10/596,111 are being filed on the date indicated below by electronic transmission with the United States Patent and Trademark Office via the electronic filing system (EFS-Web).

January 28 2009
Date

Patricia A. Heim
Patricia A. Heim

DEPOSIT ACCOUNT

The Patent Office is authorized to charge any fees associated with this filing to our deposit account no. **14-1270**

Tom Lund

Thomas M. Lundin, Reg. No. 48,979

In the Office Action of June 3, 2008, the Examiner rejected independent claim 16 under 35 U.S.C. § 102 as being anticipated by either Shulze (US 6,893,396) or Khair (US 2002/0109621).

In Amendment B of August 29, 2008, claim 16 was *not* amended. Rather, the applicant requested reconsideration of the rejection of independent claim 16.

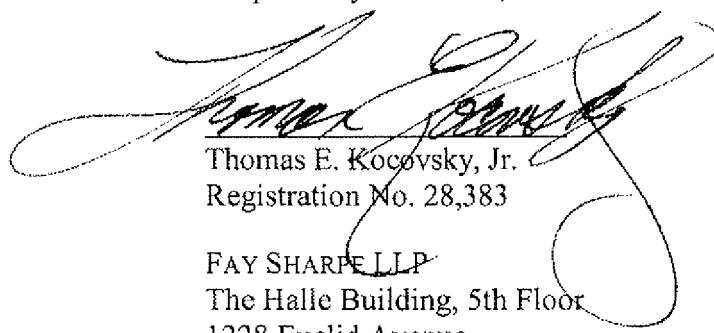
In the Office Action of December 4, 2008, the Examiner responded to the request for reconsideration of the rejection of claim 16 by withdrawing the prior rejections and making a new ground of rejection.

Because claim 16 was not amended, it is submitted that the citation of a new ground of rejection was not necessitated by the preceding Amendment B. Because the new ground of rejection applied against independent claim 16 was not necessitated by the applicant's response, it is submitted that the *Finality* of the December 4, 2008 Office Action is premature and should be withdrawn.

With the withdrawal of the *Finality* of the December 4, 2008 Office Action, the present amendment should be entered.

Applicants hereby request that the *Finality* of the December 4, 2008 Office Action be withdrawn and that Amendment C be entered.

Respectfully submitted,



Thomas E. Kocovsky, Jr.
Registration No. 28,383

FAY SHARPE LLP
The Halle Building, 5th Floor
1228 Euclid Avenue
Cleveland, OH 44115-1843
Telephone: (216) 363-9000 (main)
Telephone: (216) 363-9122 (direct)
Facsimile: (216) 363-9001
E-Mail: tkocovsky@faysharpe.com